

1 In light of that recent discussion we just had,
2 what is the relevance of this question? I thought this was
3 coming in under Issue D. What issue are we addressing here?

4 MR. SCHAUBLE: There are two issues we believe it
5 is relevant to, Your Honor. The first issue deals with the
6 process issue.

7 JUDGE CHACHKIN: All right.

8 MR. SCHAUBLE: It is also relevant, Your Honor, to
9 the issue added by Judge Sibbel to determine the impact of
10 finding the transfer of control in the Sobel case upon Mr.
11 Kay's qualifications.

12 To the extent there were other agreements of this
13 sort, I think it is at least arguably relevant that relates
14 to assuming there is a transfer of control, what is the
15 appropriate sanction for that?

16 JUDGE CHACHKIN: Well, at least asserting relevant
17 to Issue D, so will not argue about what is relevant to --

18 MR. KELLER: Your Honor, I have no problem. I
19 just wanted to make sure I knew --

20 JUDGE CHACHKIN: All right.

21 MR. KNOWLES-KELLETT: -- where we were all going.

22 JUDGE CHACHKIN: Go ahead with your question.

23 MR. SCHAUBLE: Okay.

24 BY MR. SCHAUBLE:

25 Q Mr. Kay, the question was did you or your staff

1 handle the sales of service on this station for Mr. Gales?

2 A Together with Jerry, who was running his own
3 company, would attempt to sell service if he had the
4 occasion to.

5 Jerry was an independent businessman who had his
6 own company, Metro Comm, and has for years. He would also
7 attempt to sell radios for us. We had an opportunity and
8 was given basically a finder's fee for it, so Jerry was
9 active both in paging and in two-way as his own company.

10 We would supply customers for his station, which
11 we managed. If he found a customer, that would be the same
12 way, too.

13 Q Okay. So it would be correct that from time to
14 time Mr. Gales would find customers for your company?

15 A Yes.

16 Q Those customers could be placed either on your
17 systems or a system you managed, correct?

18 A Correct.

19 Q Is it correct that you would place customers on
20 owned or managed systems without regard to who referred the
21 customer to you?

22 A I can't say that's 100 percent.

23 Q Let me ask the question this way, Mr. Kay. Is it
24 correct that the primary consideration in determining where
25 to place a customer, what station to place a customer on, is

1 the customer's needs?

2 A Correct. Of course. If you don't satisfy the
3 customer, he's not going to be happy.

4 Q Would it be correct that if Mr. Gales referred or
5 brought a customer to you, you would not necessarily place
6 him on a station licensed to Mr. Gales?

7 MR. SHAINIS: Objection as to relevance. What
8 difference does it make where he places one of Mr. Gales'
9 customers or a customer that he brought to Mr. Gales on his
10 system? How is that relevant to any issue?

11 JUDGE CHACHKIN: How is that relevant?

12 MR. SCHAUBLE: Your Honor, there is a suggestion
13 and Mr. Kay testified that from time to time Mr. Gales would
14 refer customers. I am just trying to determine was that
15 some special activity relating to this station or would he
16 just refer customers without respect to this management
17 agreement.

18 MR. SHAINIS: What is the relevancy of that?

19 MR. SCHAUBLE: We are trying to determine whether
20 there is any difference in Mr. Gales' involvement in this
21 station, as opposed to any work he may do with respect to
22 stations licensed to Mr. Kay.

23 JUDGE CHACHKIN: I will permit the question. Go
24 ahead and answer it.

25 THE WITNESS: Would you repeat it for me?

1 BY MR. SCHAUBLE:

2 Q The question is is it correct that when Mr. Gales
3 referred customers to you, this would not be an activity he
4 would be undertaking especially with respect to the one
5 station licensed to him, correct?

6 A Probably not. Jerry would sell radios to anybody
7 he could sell radios to. He would sell service to anyone he
8 could sell service to.

9 Q Now, is it correct that any revenues this station
10 generates is placed in a bank account of Lucky's Two-Way
11 Radio?

12 MR. SHAINIS: Repeat that question again, please.
13 I just did not hear the first part of it.

14 MR. SCHAUBLE: Sure.

15 BY MR. SCHAUBLE:

16 Q Is it correct that any revenues the station
17 generated would be deposited into a Lucky's Two-Way Radio
18 bank account?

19 MR. SHAINIS: Objection on relevancy.

20 MR. SCHAUBLE: Your Honor, one of the
21 considerations here is where does the money go from this
22 station.

23 MR. SHAINIS: Where it is deposited does not
24 necessarily have any determination as to where the money
25 ultimately goes. The physical act of depositing it does not

1 make any difference. It is totally immaterial.

2 JUDGE CHACHKIN: I will overrule the objection.

3 It is the same information that was garnered in the other
4 cases, the Sobel case. I will let it in here so we know all
5 the facts.

6 It is put in a single account. is that what you
7 are going to bring out?

8 MR. SCHAUBLE: Yes, Your Honor.

9 JUDGE CHACHKIN: All right.

10 THE WITNESS: Any funds received would have gone
11 into -- the checks would have been made to Lucky's Two-Way
12 Radio because we were doing the billing and, therefore,
13 would have been deposited into our business account.

14 BY MR. SCHAUBLE:

15 Q Let me ask you this. Was any type of accounting
16 ever made to determine what revenues would be garnered with
17 respect to this one particular station?

18 A Jerry Gales could get that information any time he
19 wanted by walking 40 feet to Barb Ashauer's desk and asking
20 her to look it up for him.

21 Q Okay.

22 A It was left to the licensee to do that. They
23 understood that they would do the checking on it. They
24 would know who went on it. It required a walk for Jerry
25 Gales about from one end of this courtroom to the other to

1 find out that information.

2 He still drops by our shop on a regular basis. We
3 see him. We talk to him. He's doing well. He goes back
4 and talks to Barb, and presumably the man has checked on his
5 station.

6 Q Okay. Is it correct that all expenses incurred
7 with respect to this station are paid by Lucky's Two-Way
8 Radio?

9 A I don't believe there are any individualized out
10 expenses. We're not paying specific rent for this box. I
11 rent several equipment racks for the room. I'd have to take
12 a look at the deal I have on the rent there. The
13 electricity is for everything that's there.

14 Q Okay.

15 A We pay -- there's no breakout whatsoever for the
16 repeater, maintenance or otherwise, sir.

17 Q Okay. For example, you rent space in various
18 sites throughout the Los Angeles area, correct?

19 A Yes.

20 Q For each site rental, you generally pay one check
21 in terms of site rent, correct?

22 MR. SHAINIS: Objection on relevancy.

23 MR. SCHAUBLE: Your Honor, I am just trying to
24 clarify.

25 JUDGE CHACHKIN: I will overrule the objection.

1 THE WITNESS: Yes, generally we pay one check to
2 the landlord for each site. Some landlords it's combined if
3 I have multiple sites.

4 BY MR. SCHAUBLE:

5 Q When you pay that expense, that check could cover
6 both rental for repeaters which are licensed to you,
7 repeaters for stations which you manage and repeaters for
8 equipment owned by customers, correct?

9 A And others, yes.

10 Q You make no attempt to segregate out those
11 expenses based on whether the equipment is licensed to you
12 or managed?

13 A I have no need to do so.

14 Q Okay. Now, is it correct that from time to time
15 you have placed customers on Mr. Gales' station?

16 A I have placed units on Mr. Gales' station.

17 Q Okay. Is it correct that you have salespeople who
18 are responsible for recruiting and working with customers
19 and potential customers?

20 MR. SHAINIS: Objection. Absolutely irrelevant.

21 JUDGE CHACHKIN: What is the question?

22 MR. SCHAUBLE: I am asking a preliminary question,
23 Your Honor. Did Mr. Kay have salespeople who recruit and
24 work with customers and potential customers?

25 I am establishing a foundation, Your Honor. The

1 next question is going to be --

2 JUDGE CHACHKIN: All right. I will overrule the
3 objection.

4 THE WITNESS: Yes. Buddy Corporation, of which
5 I'm president, has a number of salespeople that sell radios.

6 MR. SCHAUBLE: Okay.

7 THE WITNESS: That's what they do.

8 BY MR. SCHAUBLE:

9 Q Would it be correct that if these salespeople sell
10 service, the salespeople would not know whether the customer
11 ends up on a station licensed to you or a station which you
12 manage or some other type of station?

13 MR. SHAINIS: Objection. Relevancy.

14 JUDGE CHACHKIN: Overruled.

15 THE WITNESS: You are asking me to speak to the
16 knowledge of my salespeople. I can't necessarily know what
17 they know or don't know. They may. They may not.

18 Is it something that they need to know? Not that
19 I can think of, but may they know? It's possible. I can't
20 speak to what is knowledge in another person's mind.

21 BY MR. SCHAUBLE:

22 Q Okay. Would you or someone in your office? When
23 a customer came in, would you tell the salesperson what type
24 of station the customer was being placed on, whether it was
25 an owned or managed station?

1 A Maybe yes. Maybe no. As a general rule, probably
2 not, but I think that on a number of occasions we discussed
3 we were putting it on a managed station, especially when a
4 customer is questioning how long I will be in business.

5 Q Turn to page 4 of Exhibit 326, Mr. Kay.

6 A Yes.

7 Q Now, do you see under Paragraph 7 there is a
8 reference to an option to purchase?

9 A Yes.

10 Q Prior to this written agreement, did you have an
11 oral agreement with Mr. Gales under which he would have an
12 option to purchase this station?

13 A Not binding, but generally that Jerry would give
14 me first crack at it if he chose to sell it. Of course, a
15 verbal agreement can be non-binding. If you try enforcing
16 it, forget it. Basically the agreement was that I'd get
17 first crack at it.

18 Q Under Paragraph 8, do you see a reference printed
19 under the written agreement you are required to pay a \$100
20 fee to Mr. Gales --

21 A Yes.

22 Q -- as an option fee?

23 A Yes, I see that.

24 Q Did you in fact pay that fee to Mr. Gales?

25 A I don't believe at the initial signing of this I

1 did. Later I did. We re-executed the agreement, and I gave
2 him a check for \$100.

3 Q Okay. Is it correct, Mr. Kay, that there was a
4 subsequent version of this agreement with Mr. Gales that was
5 entered into, and at that time the --

6 A I know --

7 Q -- option fee was paid?

8 A I'm sorry. I know that happened with Marc. I
9 know I paid a check to Jerry. I don't know whether it was
10 with this one or if there was a second latter one. I don't
11 know.

12 Q Okay.

13 A I do know I paid him \$100; at least I'm pretty
14 sure I paid him \$100.

15 Q Okay.

16 A I don't know if -- I don't know, guys. I'd have
17 to look back.

18 MR. SCHAUBLE: The reason we ask, Your Honor, is
19 that in the case of Mr. Sobel we were provided two
20 agreements, and with respect to Mr. Gales we just had this
21 one agreement. We were just trying --

22 MR. KELLER: I would suggest, counsel, he has
23 testified he gave the \$100, so I do not know that it is
24 really pertinent --

25 MR. SCHAUBLE: Okay.

1 MR. KELLER: -- whether it was a re-executed
2 agreement or this one.

3 BY MR. SCHAUBLE:

4 Q It would only be different if the re-executed
5 agreement was different somehow?

6 A It wouldn't have been. If there was a subsequent
7 one, it would have been identical except that we would have
8 given him a check with that.

9 It's possible that my omission in giving the check
10 to Mr. Sobel was discovered and was still within the time
11 period to give Mr. Gales his check to execute on that
12 option, to have that option. I gave him the check.

13 That's a possible scenario. I don't -- sitting
14 her today, I don't recollect.

15 Q Okay. Mr. Kay, are you familiar with Mr. Vincent
16 Cordaro?

17 A Yes.

18 Q Okay. Is it correct that Mr. Cordaro worked for
19 you at one period of time?

20 A Yes.

21 Q Okay. Approximately what dates did Mr. Cordaro
22 work for you?

23 A From about the middle of 1991 to May of 1995.

24 Q Okay. What duties did Mr. Cordaro have?

25 A Mr. Cordaro was initially hired as a service

1 manager, and I believe about a year later he was made
2 general manager, which is the position he continued in until
3 he gave his notice.

4 Q What were Mr. Cordaro's duties as service manager?

5 A To oversee the repair, installation and customer
6 service for two-way radios.

7 Q Did Mr. Cordaro have any duties relating to
8 maintenance of repeaters, as opposed to two-way radios?

9 A He maintained some repeaters for some of our
10 customers because Industrial Asphalt owned their own
11 repeaters, so he would go up and service that. He as a rule
12 did not do servicing on Lucky's repeaters and manning
13 stations except for one that he had that was near his home.

14 He did oversee technicians that were assigned to
15 do various work, including the -- he sent technicians up
16 occasionally for us to hilltops. He also had technicians do
17 all the necessary preparation on repeaters. We'd borrow one
18 of the techs from over there.

19 Generally Randy French would come over and work on
20 the Lucky site because we had two tech groups, one for
21 two-way radios primarily and one for repeater operations and
22 mountaintop operations, so we'd borrow a technician to do
23 what we needed to have done, if that answers your question.

24 Q Yes. Okay. When Mr. Cordaro became general
25 manager, what were his duties?

1 A He continued to oversee service, but not quite as
2 much hands on, oversaw the sales operation and to a degree
3 oversaw the bookkeeping/accounting and oversaw the
4 purchasing of the company and the ordering of equipment and
5 receipt of equipment and also in customer service dealing
6 with both sales and service. He wore many hats as the
7 general manager as far as what he did.

8 Q Mr. Cordaro's duties as general manager were with
9 respect to Southland Communications, correct?

10 A Correct.

11 Q What work, if any, did he perform with respect to
12 Lucky's Two-Way Radio?

13 A He would interface with customers on complaints,
14 he himself or assign a technician to test a repeater or a
15 customer's radio system if a customer had a complaint. I
16 can't see him doing it like in my mind that he did it, but
17 I'm sure he did. He would test the repeaters to see if they
18 were working to find out why a customer was complaining, all
19 the interference situations that a customer may be
20 complaining about.

21 There's some overlap between Southland
22 Communications and Lucky's Two-Way Radio Repeater Service
23 Company. Guys would really switch hats per se as to what
24 they were doing to meet the customers' needs.

25 Sometimes Vince would work on settling a

1 customer's dispute if it was over a bill. If Barbara
2 couldn't handle an irate customer, Vince would help with
3 that. He did a number of minor chores and some moderate
4 chores along that line.

5 The man did so many things over the four years or
6 almost four years of his employment that I can't begin to
7 tell you everything he did or didn't do.

8 Q Okay. What reasons did Mr. Cordaro give you for
9 leaving your employment?

10 A He was unhappy because I had been designated for
11 hearing, that there was a possibility we -- we were looking
12 at a possibility of selling out. He saw nothing but
13 problems and difficult times ahead, especially as our
14 competitors proceeded to wave around the 308(b) letter, the
15 hearing designation order, in all our customers' faces.

16 In short, Vince figured it was time to abandon
17 ship, at least as far as he was concerned, and he gave me
18 notice, and he found another job with a cellular telephone
19 company.

20 He was also apparently disenchanted about my
21 refusal to renew an employment agreement he had with me
22 because under the uncertain circumstances that I was facing
23 at that time, I was not going to commit myself to any
24 long-term financial involvements where I would have to pay
25 the man a substantial amount of money.

1 Q Mr. Kay, during the pendency of this proceeding,
2 have you brought any civil lawsuits against Mr. Cordaro?

3 MR. SHAINIS: Objection. Relevancy. Why would a
4 civil lawsuit with Mr. Cordaro have any relevancy at all to
5 any of the issues?

6 MR. SCHAUBLE: Your Honor, two things. First, I
7 think it is relevant to the relationship between Mr. Kay and
8 Mr. Cordaro.

9 Second, this is a foundational question. We
10 believe the suits in question have been settled. We want to
11 make sure there is nothing in here which would restrict Mr.
12 Cordaro's testimony in any way; there has been no limitation
13 placed on Mr. Cordaro's ability to provide information or
14 testimony in this proceeding.

15 MR. SHAINIS: Asking that question is totally
16 different than asking about a civil lawsuit. Just ask the
17 question is there any prohibition as far as this witness
18 knows to Mr. Cordaro being able to provide testimony in this
19 case. The fact that there is a lawsuit is absolutely
20 irrelevant.

21 JUDGE CHACHKIN: I will sustain the objection.

22 BY MR. SCHAUBLE:

23 Q Mr. Kay, have you entered into any sort of
24 settlement agreement with Mr. Cordaro under which he is
25 prohibited or restricted from providing information to the

1 Federal Communications Communication either in connection
2 with this proceeding or otherwise?

3 MR. SHAINIS: Objection. Calls for a legal
4 conclusion.

5 JUDGE CHACHKIN: I will overrule the objection.

6 THE WITNESS: I know there is a settlement that
7 was prepared by my lawyers. The lawyers certainly have a
8 copy of it. I don't have one with me, and I don't remember
9 the exact contents of it.

10 Basically it's in the form of a permanent
11 injunction that he will not distribute the customer data he
12 stole off my computer while he was in my employ.

13 BY MR. SCHAUBLE:

14 Q Mr. Kay, please direct your attention to WTB
15 Exhibit 312.

16 A All right.

17 JUDGE CHACHKIN: What is your question?

18 BY MR. SCHAUBLE:

19 Q Mr. Kay, please direct your attention to page 2.
20 Do you recognize this as an application filed by Oat
21 Trunking Group?

22 A Yes, it is.

23 Q Okay. Did you prepare this application?

24 A My name is on it as preparer.

25 Q Okay. On the next page, Mr. Kay, do you see there

1 is some handwriting towards the bottom of the page under No.
2 4?

3 A Yes.

4 Q Is that your handwriting?

5 A It looks like it. My printing actually.

6 Q Okay. Now, did Oat Trunking Group, Inc., ever
7 have any employees?

8 A Not on payroll per se.

9 Q Okay. Do you see No. 31, Eligibility, "Applicant
10 operates a radio relay service company. Radios to be used
11 by company employees to coordinate company activities." Do
12 you see that?

13 A Yes.

14 Q It is correct that in this application,
15 application was made for 29 mobile units?

16 A That's correct.

17 Q Okay. Do you know why Oat Trunking Group, Inc.,
18 was filing an application with the FCC to use 29 mobile
19 units if it had no employees?

20 A Simple. I was going to use it to hold a license
21 for a community repeater and have my corporation share use
22 of that station with other users in accordance with the
23 sharing rules of the FCC, so that's perfectly permissible.

24 I can also have Buddy Corporation employees use
25 the station. Sister corporations with the same management

1 can share stations with each other. There was nothing
2 extraordinary or abnormal about it, sir.

3 Q Now, Mr. Cordaro signed this application, correct?

4 A Correct.

5 Q You were the one who appointed him as an officer
6 of that company, correct?

7 A That's correct.

8 Q You were the president of Oat Trunking Group,
9 correct?

10 A That's correct.

11 Q Do you recall why Mr. Cordaro, as opposed to you,
12 signed this application?

13 MR. SHAINIS: Objection on relevancy grounds.
14 What difference does it make who signed the application?

15 JUDGE CHACHKIN: I will overrule the objection.

16 THE WITNESS: I don't recall the precise reasons.
17 If I were to make a best estimate, it's because at that time
18 I was trying to get Mr. Cordaro more involved in the
19 operations of my company to possibly even become an owner in
20 my company.

21 This was dated I think that's 6-8-92. That would
22 be just after he became the general manager of my company,
23 and he wanted to be more involved and possibly become an
24 owner of the company. Since that didn't work out for him is
25 I think one of the reasons he ultimately left my employ. He

1 wanted more than just to be an employee.

2 BY MR. SCHAUBLE:

3 Q Mr. Kay, during the time Mr. Cordaro was an
4 employee of yours, did you have an understanding as to
5 whether Mr. Cordaro was involved in other businesses?

6 A Mr. Cordaro had been an entrepreneur himself for
7 many years before he came to work for me.

8 Q Okay.

9 A It was fully understood that as long as he wasn't
10 banging on competition with me where he would adversely
11 affect my business, then he was permitted -- I had no
12 difficulty with him augmenting his income by running other
13 companies.

14 I know he had a company called VSC Enterprises
15 that he did business under doing various things. I know he
16 did some publishing of some sort, though I didn't see it. I
17 heard about it. I could go by what he told me he was doing.

18 Also, I know he and a buddy of his by the name of
19 Rudy Catania, who was also a radio guy I met a couple of
20 times, went out and did various radio communications things,
21 installed cable television systems and master antennas and
22 satellite dishes.

23 They had -- Vince, with or without Rudy, had a
24 side business running. I knew they had it. I knew Vince
25 had an office in his home, though I was never to his home.

1 He told me he had it. I didn't know a great deal of what he
2 was doing, but I know he was doing something.

3 Q During the time he was employed with you, --

4 A Yes.

5 Q -- do you have an understanding as to whether he
6 was also running a radio service company on the side?

7 A He was actually fixing two-way radios? You say a
8 radio service company. That covers a lot of turf, sir.

9 Q Okay. Do you know if he was on the side providing
10 any sort of services relating to two-way radios, either in
11 terms of fixing mobile units or running repeaters or --

12 A We had helped him obtain an SMRS license for
13 Rasnow Peak, which you're aware of, that he operated. He
14 operated radios on it, which he had in his own possession,
15 in his own vehicles.

16 What all Vince was doing I don't know. I heard
17 bits and pieces of things he was doing, but it wasn't my
18 concern. I had no indication it was adversely affecting me,
19 so I didn't stick my nose into it.

20 Q Mr. Kay, please direct your attention to WTB
21 Exhibit 313.

22 JUDGE CHACHKIN: 313?

23 MR. SCHAUBLE: 312, Your Honor.

24 BY MR. SCHAUBLE:

25 Q Mr. Kay, do you recognize this as a license that

1 was issued to Oat Trunking Group, Inc.

2 A Yes, it is.

3 Q Would it be correct that this would be an end user
4 license --

5 A Yes.

6 Q -- authorizing up to 18 mobiles?

7 A That's right.

8 Q Okay. Do you see towards the bottom of the
9 license there is a notation SMRS WPAP683?

10 A That's correct.

11 Q Would it be correct from the notation that the end
12 users covered under this license would be loaded on an SMR
13 station with the call sign WPAP683?

14 A That's right.

15 Q Okay. Were you the licensee of WPAP683?

16 A Yes, I was. This was a conversion.

17 Q Okay. Please describe for the record what you
18 mean by conversion?

19 A It was a community repeater, which was licensed to
20 Oat Trunking Group, which shared use with other users, my
21 customers, pursuant to the sharing rules of the Commission
22 and was a channel fully loaded by other co-channel stations.

23 I could further channel the community repeater
24 that it was licensed for, in effect tearing the license in
25 half, you might say, to generate an SMRS base station, which

1 was assigned WPAP683, and to convert the base station, going
2 away leaving Oat Trunking with just a user license that was
3 granted on October 5, 1992, just before the elimination of
4 SMRS end user licensing like this.

5 Within a month or so thereafter, I modified
6 WPAP683 to add controls of mobiles to it, thus eliminating
7 any use of this Oat Trunking end user license at that time.

8 Does that answer your question as to what was done
9 here, sir, and how we did it?

10 MR. SCHAUBLE: Thank you.

11 JUDGE CHACHKIN: Why do we not take a lunch recess
12 now until 1:00 p.m.?

13 (Whereupon, at 12:00 p.m. the hearing was
14 recessed, to reconvene at 1:00 p.m. this same day,
15 Wednesday, December 23, 1998.)

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1 A F T E R N O O N S E S S I O N

1:00 p.m.

JUDGE CHACHKIN: Back on the record.

Whereupon,

JAMES A. KAY, JR.

having been previously duly sworn, was recalled as a witness herein and was examined and testified further as follows:

DIRECT EXAMINATION RESUMED

BY MR. SCHAUBLE:

Q Good afternoon, Mr. Kay.

A Good afternoon.

0 Please turn to WTB Exhibit 322.

JUDGE CHACHKIN: 322? Is that what it was, 322?

MR. SCHAUBLE: Yes, Your Honor.

BY MR. SCHAUBLE:

Q Do you have that, Mr. Kay?

A Yes, I do.

Q Is this an agreement you had with Mr. Cordaro under which you agreed to manage a station licensed to him?

A Yes, it is.

Q Okay. Turn to Exhibit 323.

A Page 3? Is that what you said?

Q Exhibit 323.

A I'm sorry.

Q Is it correct that this is a subsequent version of

1 the management agreement between you and Mr. Cordaro?

2 A Yes.

3 Q Is it correct that Exhibit 323 was executed so
4 that you could pay the \$100 option fee described on page 4
5 of the agreement?

6 A Yes.

7 Q How did it come to pass that Mr. Cordaro came to
8 apply for this station?

9 MR. SHAINIS: Objection. How would this witness
10 know how Mr. Cordaro came to apply for this station? Would
11 that not be a question to ask Mr. Cordaro?

12 MR. SCHAUBLE: To the extent the witness knows.

13 JUDGE CHACHKIN: All right. I will permit the
14 question. I think the witness can answer the question.

15 How did you get involved in Mr. Cordaro's entering
16 into this agreement.

17 THE WITNESS: Entering into the agreement?

18 MR. SCHAUBLE: Your Honor, let me withdraw the
19 question and ask a couple foundation questions.

20 BY MR. SCHAUBLE:

21 Q Prior to having these written agreements, Mr. Kay,
22 is it correct that you had an oral agreement with Mr.
23 Cordaro under which you would manage the station?

24 A Yes. Yes.

25 Q Approximately when did you enter into this oral

1 agreement?

2 A I don't remember the time. It would have been
3 sometime subsequent to the granting of his license.

4 Q Okay. Prior to the granting of the license, did
5 you prepare the application which led to the grant of this
6 authorization?

7 A Do you have the application for me to look at to
8 see if I was preparer?

9 Q We do not have the underlying --

10 A Absent that, I would say probably because I did
11 the applications for my company.

12 Q Do you recall if Mr. Cordaro approached you and
13 requested your assistance in preparing an application for an
14 SMR station?

15 A I don't remember. I remember we had
16 conversations. I had done licenses for Mr. Cordaro while he
17 was his own independent company. I don't know if he
18 approached me, it came up in conversation or how.

19 Q Okay.

20 A Let me elaborate a little bit on that. I'd have
21 to look at the time frame, but I think it was shortly
22 after -- not too long after Cordaro came to work for me. He
23 was shifting from a proprietor to an employee.

24 He had tax situations, amongst other things, and
25 having a business allowed him extra deductions in operating

1 an SMRS station, which is a commercial enterprising
2 business, albeit under an agreement, still gives him a
3 business enterprise and allows him to remain in business,
4 giving a more advantageous tax structure.

5 That's one of the things Vince and I talked about
6 was his income and tax situation. He was not very happy as
7 coming over as an employee because it changed his whole tax
8 structure.

9 Q Okay. Did you suggest to Mr. Cordaro that it
10 might be advantageous for him to apply for an SMR station?

11 A I just don't recall if I did or he approached me
12 or it came up in conversation or how.

13 Q Okay. Mr. Kay, turn back to Exhibit 315. My
14 question is did you prepare this letter for Mr. Cordaro?

15 A It's likely.

16 Q Mr. Kay, do you recall the terms of the oral
17 agreement you had with Mr. Cordaro prior to entering into a
18 written agreement with him?

19 A I believe it consisted of that we would supply the
20 equipment for the station and that he would have use of the
21 station for himself or himself and his wife. He would have
22 a mobile unit and portable units, whatever he needed radio
23 wise, which he had, and that we would market the station.

24 He could use the station with himself or whoever
25 else he wanted to, his family and his radio buddy, Catania,

1 whoever he wanted to use it with at no charge whatsoever, of
2 course, to him.

3 We would market it to the degree that we could.
4 Either we would or he would maintain it because it was very
5 near his house. I don't remember all the details of it.

6 Q Okay. Under the oral agreement, was it correct
7 that you would receive the revenues from the station up to a
8 certain amount in order to meet expenses?

9 A Yes.

10 Q Okay. Do you recall what the amount was?

11 A The management agreement here called for \$600. I
12 think our verbal agreement was like \$500 or \$600. I don't
13 remember the exact dollar amount.

14 Q Do you recall whether the revenues from the
15 station ever exceeded \$500 or \$600 a month?

16 A I don't believe they ever did.

17 Q Okay. Now, is it correct that you provided the
18 equipment needed to construct this station?

19 A I just said I did. Yes.

20 Q Okay. Is it correct that you marketed this
21 station?

22 A Yes.

23 Q Is it correct that you paid any expenses incurred
24 in connection with maintaining or operating this station?

25 A Again, it wouldn't have separate bills, but I paid

1 the rent for all the equipment that was at the site.

2 Q Okay. Did Mr. Cordaro have the ability to check
3 and determine what revenues the station was generating?

4 A Yes, sure. He walked the 50 or 60 feet over to
5 Barbara Ashauer's desk and asked, or presumably he could
6 look it up himself. He had the ability. He could have
7 access to files. He knew what customers were being placed
8 on it.

9 He was my service manager, which if someone was
10 being programmed to use the system he'd see the service
11 work. Sure, he knew what was going on with that station.
12 He used the station for his mobile as well.

13 Q Okay. Mr. Kay, is it correct that this station
14 was constructed and placed in operation within the time
15 frame required by the Commission's rules?

16 A To the best of my recollection it was.

17 Q Okay. The construction was undertaken by you or
18 someone under your direction?

19 A I don't remember who did it, but it would have
20 been myself, Mr. Sobel, with or without Mr. Cordaro. I
21 don't know whether he assisted or not.

22 Q Now, the station was located at Rasnow Peak,
23 correct?

24 A That's correct.

25 Q Did Mr. Cordaro ever go to Rasnow Peak and work or

1 maintain the repeater in any way?

2 A In his deposition he said he went up there once,
3 and I do remember another occasion where he did go up there.

4 Q Okay.

5 A He went up there I think it was November of 1993
6 to inspect the equipment.

7 Q Was that because of a fire in that area?

8 A Yes. It was one of those really great feelings
9 watching on the telecopier your relay site getting burned to
10 the ground. He went up there to see if there was anything
11 left. Slag was all that was left.

12 Mr. Cordaro told that as almost a war story about
13 how he drove up, and the fire trucks were still there,
14 driving over charged water hoses to check the equipment. It
15 was an interesting story he told us the next day.

16 Q Now, it is correct that this management agreement
17 is no longer in existence, correct? It is no longer in
18 effect?

19 A It's totally moot.

20 Q That is because this license has been cancelled,
21 correct?

22 A Cancelled, purged. It's gone.

23 Q Now, do you recall approximately when it was
24 cancelled or purged?

25 A A couple years ago, I think.

1 Q Okay.

2 A Maybe longer.

3 Q Was there a time when this management agreement
4 was in operation after Mr. Cordaro left your employ?

5 A Presumably from when he quit in May of 1995 going
6 forward until the license cancelled.

7 Q Okay. In that time period after he left your
8 employ, did he have any role in operating or maintaining the
9 station?

10 A We talked to Vince every once in awhile during
11 that period of time, but I don't know how much role he took.
12 It was kind of in a way incumbent on him to contact us,
13 though if anything serious happened we would contact him.
14 If there were any inquiries, we would have contacted him
15 immediately.

16 I don't particularly see anything significant
17 going wrong with the station at that station.

18 Q Mr. Kay, would it be correct to state that this
19 station of Mr. Cordaro's was managed in a similar fashion as
20 the stations you managed for Mr. Gales and Mr. Sobel?

21 A By and large, except that Mr. Cordaro used this
22 station himself personally for his mobile radios and
23 telephone interconnect to make him receive phone calls off
24 of the station.

25 I think he used it directly more hands on than

1 possibly Marc Sobel or Jerry Gales used theirs in that
2 fashion. That's the only thing I could think of, but
3 basically the same. He had a little more hands on use was
4 all.

5 Q Okay. Did Mr. Cordaro have any duties with
6 respect to activating customers on his station?

7 A On which stations?

8 Q On the station licensed to him.

9 A Activating them? He handled some code stuff
10 coordinating it for customers, but I don't think he actually
11 did the turn offs/turn ons, turn ons or turn offs, though he
12 could have directed it to be done. I don't recall him
13 directly doing it, though I think he had access to it.

14 Q Okay.

15 A I don't remember him doing it, but I think he --
16 he had access, but I don't know whether he ever did.

17 Q Okay.

18 A I don't remember him doing it, but he had the
19 information and knew how to. I believe I showed him how
20 that was all done so he could do it if need be.

21 Q Would it be correct that both the respective
22 stations you owned and the stations that you managed that
23 either yourself or Marc Sobel handled the majority of the
24 work relating to activation of customers?

25 A By and large, yes. Also another service guy can

1 do some.

2 Q Who would that other service person be?

3 A Of late, Don Petrone can also do some.

4 Q Okay. You referred to a person, Ken?

5 A Ken Schultz.

6 Q Okay.

7 A Actually, I had just said the other person that
8 would do activations was Don Petrone, not Ken Schultz.

9 Q Okay.

10 A Ken could possibly, too.

11 Q Okay. Mr. Kay, if you could direct your attention
12 to WTB Exhibit 316? Do you have that before you, Mr. Kay?

13 A Yes.

14 Q Did you have any role in preparation the
15 application that led to this authorization?

16 A Do you have the application so I can see if I was
17 on it as preparer?

18 MR. KNOWLES-KELLETT: No, we do not.

19 THE WITNESS: I would guess that I probably was.
20 I did most of the applications most likely for Vince. I
21 can't be 100 percent certain, but it's a likelihood.

22 BY MR. SCHAUBLE:

23 Q Okay. Are you aware of the circumstances under
24 which Mr. Cordaro, doing business as VSC Enterprises, came
25 to apply for this authorization?

1 A So he could use is SMRS station. If he's going to
2 use his SMRS station, he certainly needs a license for it.

3 Q Okay. Is it correct that this is an end user
4 license which was going to be loaded on WNXR890, which was a
5 station subject to the management agreement?

6 A That's correct. That's what it says.

7 Q Is it correct that the number of mobiles
8 authorized is 64?

9 A He could operate up to 64 units.

10 Q Okay.

11 A He could share his station with other users if he
12 chose to do so.

13 Q Do you know whose decision it was to apply for 64
14 mobiles under this --

15 MR. KELLER: Objection. Irrelevance. There are
16 64 mobiles. They are not credited to any stations licensed
17 to Mr. Kay, so this is not possibly relevant to the loading
18 issue. What is the relevance of who decided how many
19 mobiles?

20 MR. SCHAUBLE: Your Honor, it relates to the
21 relationship between Mr. Kay and Mr. Cordaro.

22 JUDGE CHACHKIN: I will overrule the objection.

23 THE WITNESS: I think it's what may have been left
24 available on the channel, even though the channel was
25 already fully loaded in his area. It allowed plenty of

1 room.

2 My guesstimate is it would allow plenty of room
3 for Mr. Cordaro and other customers that we would put on the
4 channel to share use of this license to utilize his station
5 because the frequency that his spur was on was already
6 precluded from any further licensing by two co-channel
7 stations that were on his frequency, so whether he had one
8 unit or five units, 50 units or 500 units, nobody else could
9 license on the channel because of other co-channel stations.

10 I don't know where the 64 units was derived from,
11 but that I think provided an adequate quantity for placing
12 customers on there.

13 Then the rules changed about the issue date, which
14 is November of 1992, which allowed the SMRS base station
15 operator to provide service directly to customers under the
16 base station license.

17 BY MR. SCHAUBLE:

18 Q Mr. Kay, please direct your attention to WTB
19 Exhibit 317. Do you have that in before you, Mr. Kay?

20 A Yes, I do.

21 Q Do you recall whether you had any role in
22 preparing the application that led to this authorization?

23 A Do you have a copy for me to see?

24 Q I do not.

25 A It's entirely probable I typed it up. I can't

1 tell you for certain unless you can show it to me.

2 I don't remember doing it, but it's a probability
3 that I did. I prepared probably well more than 1,000
4 license applications over the last number of years. I don't
5 remember, though it's probable I did.

6 Q Okay. Do you recall the purpose for which Mr.
7 Cordaro wished to use this license for?

8 A Yes.

9 MR. SHAINIS: Objection. That assumes he knew the
10 purpose.

11 JUDGE CHACHKIN: Overruled.

12 THE WITNESS: The purpose of applying for a
13 license is to get the license to operate the station. It
14 kind of speaks for itself. When you apply for a license,
15 the presumption is that you're going to use it.

16 BY MR. SCHAUBLE:

17 Q Do you recall whether he was going to use it for
18 purposes relating to VSC Enterprises?

19 A This is an SMRS base station license. It itself
20 does not authorize use of controls and mobiles on it at
21 least until after the rule change in October of 1992, so
22 this would not authorize him to use it himself for his own
23 use unless there was a subsequent SMRS user application or
24 after the rules changed.

25 At the time it would have been applied for, which

1 would be at least a couple, if not three or four, months
2 before its grant date, it would not have authorized his own
3 use of it, but the operation of the repeater as an SMRS
4 facility to provide service to others. That's the way it
5 works.

6 Q Did you ever manage this facility for Mr. Cordaro?

7 A I believe I did for a short time.

8 Q Okay. But there was never an agreement reduced to
9 writing with respect to this facility, correct?

10 A With Mr. Cordaro? No, there was no agreement with
11 Mr. Cordaro relating to this station.

12 Q I direct your attention to WTB Exhibit 318. Is it
13 correct that this is a subsequent license issued for
14 WNPY680?

15 A Correct. That's what it is.

16 Q Okay. Among other things, a revised license adds
17 mobiles to the authorization?

18 A Correct. In accordance with the rule change, SMRS
19 operators often added controls and mobiles to their
20 stations, which would cover their customers that were
21 operating it, allowing them complete flexibility to provide
22 service to others, use it themselves or whoever they chose
23 to have use their station.

24 Q Now, did there come a time when Mr. Cordaro ceased
25 being a licensee for this station?

1 A I believe the license was later assigned.

2 Q Do you know to whom the license was assigned?

3 A I believe he assigned it to Marc Sobel.

4 Q Okay. Do you recall approximately when that
5 happened?

6 A This was granted May of 1993. I don't know. I'm
7 sure you know. I don't know offhand. I assume it's
8 subsequent to May of 1993.

9 Q Mr. Kay, please direct your attention to WTB
10 Exhibit 319.

11 A Okay.

12 Q Is this note in your handwriting?

13 A Yes, it is.

14 Q Do you recall the circumstances under which you
15 wrote this note?

16 A The best I recall is this had to have been done
17 sometime in latter 1992. A fellow by the name of Jim
18 Doering, through an attorney, Lew Goldman, had filed a
19 rather ugly petition against Mr. Cordaro.

20 Mr. Cordaro, if I recall correctly, at my office
21 asked me to tell him what licenses he had. I presume he had
22 them all at his house, but he asked me at my office because
23 he got the petition there. My guess is I scribbled it out
24 for him saying this is what you've got here.

25 He wanted to know who my attorney was as to how we

1 were going to handle this petition that had been filed
2 against him, so I wrote down the attorney's name at the
3 bottom.

4 Because it was Doering that was petitioning,
5 that's why it says save F-R-E-Q, which is frequency,
6 Doering. That's the one the application was protesting, the
7 petition was protesting.

8 I basically gave him information. I don't think I
9 really thought a whole lot about it. It's what the man
10 wanted to know. He had a reason. I gave it to him.

11 Q Okay. Is it correct in connection with that
12 petition that Mr. Cordaro filed an opposition to that
13 petition?

14 A Yes, to the best of my recollection.

15 Q The opposition was filed on his behalf by Brown
16 and Schwaninger?

17 A I believe so.

18 Q Did you refer Mr. Cordaro to Brown and
19 Schwaninger?

20 A Yes.

21 Q Okay.

22 A I put them in touch.

23 Q Okay. Do you know who paid the legal fees
24 incurred in connection with preparing the opposition to the
25 petition?